IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4131 OF 2007
IN
SUIT NO. 2829 OF 2007

Joseph P.Sequeira and Ors. ... Plaintiffs.

V/s.

Sunder P. Pujari. ... Defendant.

Mr. G.S. Bhat for the Plaintiffs.
Mr. S.B. Amin for the Defendant.

CORAM : DR. D.Y. CHANDRACHUD,J.

04TH DECEMBER 2007.

P.C. :-

. By consent the Notice of Motion has been taken up for hearing and final disposal. Counsel appearing on behalf of the Plaintiffs and the Defendant have been heard on the motion for interim relief.

2. The First Plaintiff who is now aged 93 years claims that together with his wife he was the owner of a hotel business known as Durga Udipi Bhavan, situated at Shop No.13, Gopal Mansion, Turner Road, Bandra (West), Mumbai. The wife of the First Plaintiff died intestate on 3rd October 2000. The Second, Third and

Fourth Plaintiffs are respectively a daughter and two sons of the First Plaintiff. Agreements were entered into between the First Plaintiff and the Defendant by which the Defendant was allowed to conduct the business of a Hotel in the aforesaid premises. The last of the conducting agreements was entered into on 10th January 1996 for a period of five years, to expire on 9th January 2001. Under the agreement, the Defendant deposited a sum of Rs.1 lakh and was to pay a monthly compensation of Rs.3,000/-. Clause 9 of the agreement was to the following effect :-

> " The Manager admits that there is a rights or mere permission hereby granted by the Owners to the Manager to run and to manage the said hotel business does not and is not intended to create any interest whatsoever in favour of the Manager in respect of the said Hotel and or to its said premises and as such the Manager expressly undertakes not to claim any such interest and not to put up any plea of sub-tenancy in respect of the said premises and at the cost and request of the Owners to execute such writing or deed, releasing and relinquishing in favour of the

owners all deed such right or interest accruing to the Manager by virtue of these payments or as may be reasonably required by the owners in that respect."

3. In paragraph 4 of the plaint, it has been averred that upon the expiry of the period of five years, the Defendant continued to run the business on an enhanced monthly royalty of Rs.6,500/-. The deposit which was furnished by the Defendant was alleged to have been increased by an amount of Rs.4 lakhs, to Rs.5 lakhs. According to the Plaintiffs, the Defendant committed a default in the payment of royalty with effect from the month of April 2006. By a letter dated 28th September 2006, the Plaintiffs called upon the Defendant to hand over possession, recording therein that the Defendant had stopped paying the royalty for the Hotel business in April 2006. The reply of the Defendant dated 13th October 2006 was that the licence was irrevocable. The contention of the Defendant was that the shop belongs to the family of one K.P. Bharucha from whom the Defendant acquired the premises. According to the Defendant, an amount of Rs.4 lakhs was paid to the Plaintiffs in settlement of the claim of the

Plaintiffs.

4. An affidavit-in-reply has been filed to the Notice of Motion in which the defence is that a sum of Rs.4 lakhs was paid by the Defendant to the First Plaintiff and his deceased wife for the sale of the suit premises. The Defendant further claims that by a registered conveyance dated 6th May 2006, the landlord has sold and transferred the premises to the Defendant.

5. There is no dispute about the factual position that a conducting agreement was entered into between the parties on 10th January 1996 by which the Defendant was allowed to conduct the business of the hotel. Clause 9 of the agreement stipulates that the Defendant would not have an interest whatsoever in the premises and that the agreement only constituted a permission to the Defendant to manage the Hotel business. In paragraph 4 of the plaint, the Plaintiffs have stated that upon the expiry of the term of the agreement, the deposit was increased by a further sum of Rs.4 lakhs. There is a specific allegation in paragraph 5 of the plaint that the monthly royalty was not paid by the Defendant from the month of April 2006. It is in this

background that the defence would have to be evaluated, prima-facie for considering the application for the appointment of a Receiver. The contention of the Defendant is that on 19th July 2001, an amount of Rs.4 lakhs was paid to the Plaintiffs and a receipt was executed. The receipt which is annexed at Exhibit 11 to the reply does not specifically state the purpose of the payment. The case of the Defendant is that an amount of Rs.4 lakhs was paid to the Plaintiffs for the acquisition of the right of the Plaintiffs in the premises. This prima facie is belied by the circumstance, that even after 19th July 2001 which is the date of the aforesaid receipt, the Defendant continued to pay the royalty and it was after April 2006 that a default was committed. The averment in paragraph 5 of the plaint to the effect that the Defendant committed a default in the payment of royalty from the month of April 2006 has not been controverted in paragraph 14 of the reply. If as is the case of the Defendant, an amount of Rs.4 lakhs was paid to the Plaintiffs towards the acquisition of the rights of the Plaintiffs in the premises, there was no occasion for the Defendant to continue to pay the royalty even thereafter until 31st March 2006.

6. The Defendant claims to have now acquired the title of the premises in pursuance of a conveyance executed on 6th May 2006 with the original owner. The acquisition of title by the Defendant would however not obliterate the interest of the Plaintiffs as a tenant in the premises. The Defendant will have to take recourse to the remedies open to him in law to extinguish the tenancy of the Plaintiffs. The occupation by the Defendant is in his character as the conductor of the business, a character which traces itself to the entitlement of the Plaintiff as a tenant of the premises. The recitals in the agreement entered into by the Defendant with the owner of the premises recognise that the Plaintiff was a tenant of the premises since 1960 and the Defendant was conducting the hotel business therein. The recital is to the effect that the Defendant occupied the premises as a sub-tenant with effect from 10th January 2001. Now, it is not the case of the Defendant that he had acquired a sub-tenancy in the premises from the Plaintiff. Hence, in the event that the Defendant seeks to assert his interest as an owner of the premises he would have to seek recourse to the remedies in accordance with law

for the eviction of the Plaintiffs by filing a suit before the Competent forum. The rights of the Plaintiffs as a tenant cannot **ipso facto** be brought to an end by the acquisition of title by the Defendant.

7. The conducting agreement has been terminated by the Plaintiffs. The Plaintiffs would be entitled to the appointment of a Receiver as prayed. The Notice of Motion is made absolute in terms of prayer clause (a). The Defendant shall be at liberty to apply to the Receiver for appointment as agent subject to the payment of such royalty as may be fixed by the Court Receiver. Until the Receiver takes charge, there shall be an ad-interim injunction in terms of prayer clause (b).

8. The Defendant shall deposit the arrears of royalty from April 2006 fully.